IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 113 OF 1999.

1. Deputy Collector (SDO),
   Sub-Division, Margao,
   Goa.

2. The Executive Engineer,
   W.D. VI, P.W.D.,
   Margao, Goa. ... Appellants.

VERSUS

Shri Somu Soiru Pagui,
resident of House No.224,
Betul, Quepem, Goa. ... Respondent.

Shri S. Vahidulla, Government Advocate for the Appellants.

None for the Respondent.

CORAM: N. A. BRITTO, J.

DATE: 27TH APRIL, 2004.

ORAL JUDGMENT:

The State of Goa through its L.A.O./Deputy Collector, Margao and Executive Engineer, Works Division VI, P.W.D., Margao has filed the present appeal against the Judgment/Award dated 28.7.99 of the learned Addl. District Judge (II), Margao (Reference Court, for short) by which the learned Reference Court has enhanced the compensation payable to the respondent from Rs.6/- per sq.m. as awarded by the L.A.O. to Rs.25/-per sq.m.

2. Briefly stated, by virtue of Notification issued under Section 4(1) of the Land Acquisition Act, 1894 dated 14.1.1988 and published in the official gazette dated 4.2.88 the Government acquired about 7750 sq.m. of land in Village Panchayat of Velim in Salcete Taluka for the purpose of construction of an approach road to go to Baradi chapel and in that was included an area of 180 sq.m. of the plot of land admeasuring 288 sq.m. belonging to the respondent forming part of survey No.345/8.

3. The respondent (original applicant) examined himself and inter alia produced a sale deed dated 13.3.85 (Exh.AW1/A) by which he had purchased the said plot admeasuring 288 sq.m. at the rate of Rs.17.36 per sq.m. The appellants/original respondents examined their Junior Engineer Shri Naik.

4. The learned Reference Court chose to rely on the sale deed dated 11.3.85 (Exh.AW.1/A) as the best guide to enhance the compensation payable to the respondent and enhanced the same to Rs.25/- per sq.m. after giving 10% appreciation to the respondent since the said sale deed was made about three years prior to the date of Notification under Section 4(1) of the Act. However, the increase at 10% works out to Rs.22.55 per sq.m. but the learned Reference Court fixed the rate

at Rs.25/- per sq.m. considering the fact that the remaining portion of the land of the respondent was rendered unfit for the purpose of construction on account of the said acquisition.

5. The only question which arises before this court is whether the learned Reference Court was justified in giving to the respondent the said rate of Rs.17.36 per sq.m. based on the very sale deed by which the respondent had purchased his plot, with appreciation at the rate of 10%.

6. Shri Vahidulla, learned Govt. Advocate appearing on behalf of the appellants, has submitted that the respondent had purchased the said plot with an existing access only with the intention of getting a higher price at the time when the said access would be acquired by the Government for the purpose of construction of the road. Shri Vahidulla has further submitted that there was no question of the respondent having been given an increase of 10% because the said existing access was already dividing the property of the respondent and therefore there was no question of any portion of the property of the respondent being rendered unfit for the purpose of construction. Shri Vahidulla next submitted that although the respondent had stated that he had purchased the said plot for the

purpose of construction of a house, the facts stated and proved on behalf of the appellants showed that the respondent would never have been able to build a house thereon.

7. Admittedly, the plot purchased by the applicant/respondent admeasuring 288 sq.m. was first carved out from a larger property surveyed under No.345/8 by its original owner by name Clemente Antonio Cruz Nicolau Caeiro and the same was sold to Nani Zoidev Diukar by sale deed dated 4.7.74 from whom the respondent purchased the same by sale deed dated 11.3.1985 . There is no evidence on record to show at what rate the said Clemente Caeiro had sold the said plot to the said Nani Diukar from whom the said respondent purchased the same.

8. The award of the L.A.O. shows that the acquired property was sloppy and rocky and that even for the construction of a road it had to be cut and filled. This position has been accepted by the respondent when he stated that the plot purchased by him was sloppy and hilly. The learned Reference Court appears to have completely ignored the evidence of RW.1 Shri Naik, Jr. Engineer examined by the appellants. The evidence of RW.1 Shri Naik showed that there was a kutcha access having a width of three metres in the acquired land

which access was used by the people from the locality of Baradi village in order to go to the said Baradi Chapel and the said kutcha access was shown in the survey plan. RW.1 Shri Naik had also stated that the set-backs required to be maintained were of about 15 metres from the centre line of the road and that the respondent's property was not suitable for construction purpose as it was in the set-back area and this position was not even controverted on behalf of the respondent. The evidence on record clearly showed that what the respondent had actually purchased was an existing kutcha road which was subsequently acquired for the purpose of construction of a pucca road. Although the respondent stated that he had purchased the said plot for the construction of a house, a house could never have been constructed thereon because the plot purchased by him was sloppy, and hilly, was divided by an existing kutcha road used by the people of the locality and which kutcha road was even shown on the survey plan and otherwise also the said plot was affected by the set-backs required to be kept from the existing P.W.D. road. Although the said plot was carved out and sold for the first time in 1974, for almost 11 years, the said Nani Z. Diukar had not thought of constructing any house thereon and for almost three years thereafter the respondent had also not thought of constructing any house thereon until the

Government acquired the said existing kutcha road for the purpose of constricting a pucca road by notification dated 14.1.88. It was not the case of the respondent that he had applied for any permission for construction during the three years he held that plot in case he had purchased the same for construction of a house. As stated before, the respondent's plot with its disadvantages could never have been used for construction purpose.

9. Generally a sale deed of the self-same land is preferred as a guide to fix compensation payable on account of acquisition of the same land. However, in the case at hand the respondent does not appear to have acted as a prudent purchaser when he purchased the said plot with major portion of existing kutcha road at the rate of Rs.17.36 per sq.m. No prudent willing purchaser would have purchased a small plot with major portion of existing kutcha road at the said rate and therefore the respondent could certainly not expect the L.A.O. to give the same rate to him when the Government acquired the said existing kutcha road for the purpose of constructing a pucca road thereon. There was no question of the balance area being rendered useless because in any event an existing kutcha road had rendered the same useless and yet the respondent had purchased such an area for a price of

Rs.17.36 per sq.m.

10. Considering the peculiar facts of this case, in my opinion, learned Reference Court was not justified in awarding to the respondent enhanced compensation at the rate of Rs.25/- per sq.m. No prudent willing purchaser would have paid the said rate for a small plot which had major portion covered by an existing kutcha road.

11. In the circumstances, therefore, the appeal deserves to succeed and the Judgment and Award dated 28.7.99 of the learned Reference Court deserves to be set aside. Order accordingly.

N. A. BRITTO, J.

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